THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.17605 of 2004

Dated 14-02-2006

Between:

K.Prathapa Reddy and another … Petitioners

And

The Superintendent of Excise and

Prohibition Department and others … Respondents

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.17605 of 2004

O R D E R:

The petitioners were granted lease of Kanigiri group of arrack shops

consisting of 39 shops on 14-09-1992 for the lease year 1992-1993 on a monthly rent of Rs.12,51,000/-.

This writ petition is filed questioning the notification dated 03-03-2003 issued by the third respondent-District Collector under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864 (hereinafter referred to as 'the Act') whereunder the fourth respondent-Mandal Revenue Officer was empowered to distrain the movable and immovable properties of the petitioners' and conduct sale for recovery of the arrears recoverable under the Act. The petitioners also assailed the consequential notice of sale dated 02-09-2004 issued by the fourth respondent-Mandal Revenue Officer in Form - 7 under Section 36 of the Act notifying that the immovable properties specified thereunder, which belong to the petitioners, will be sold by public auction on 06-10-2004.

The petitioners do not dispute the fact that they were granted lease in respect of Kanigiri group of arrack shops and accordingly a contract was entered into with the respondents 1 and 2 by signing a counterpart agreement. However, the only plea raised is that having come to know about the impugned notification dated 03-03-2003, they made a representation dated 17-09-2004 to the respondents 1 and 2 disputing their liability which is still pending and therefore the sale notice dated 02-09-2004 issued by the fourth respondent is arbitrary and illegal.

This Court while directing Rule Nisi on 30-09-2004, granted interim order to the effect that the auction, if any, held in pursuance of the impugned sale notice dated 02-09-2004 shall be subject to further orders in the writ petition.

In the counter-affidavit filed by the Prohibition and Excise Superintendent, Ongole, on behalf of the respondents 1 and 2, it is stated that the petitioners failed to furnish bank guarantee as required under the statutory rules and as such the licences in respect of Kanigiri group of arrack shops were cancelled and the same were put to

re-auction on 22-12-1992. However, since there were no bidders, sales in kanigiri group of arrack shops were conducted through department during the lease year 1992-1993 resulting in loss of Rs.80,26,314/- due to the re-auction and on account of running the arrack shops departmentally. In the circumstances, a letter dated 31-03-1994 was addressed by the District Collector, Prakasam District, directing the third respondent to realise the said amount from the petitioners, who are defaulters under the provisions of the Act. Accordingly the impugned notices were issued.

It is also explained that in pursuance of the notification dated 03-03-2003, the movable properties of the petitioners were attached and sold and the sale proceeds were credited to the Government account. Subsequently, though the immovable properties in question were attached and sale was proposed to be conducted on various dates, for want of bidders, the sale was postponed from time to time. The plea of the petitioners that they made representation dated 17-09-2004 has been categorically denied and it is stated that though the liability of the petitioners was determined long back, the petitioners never disputed the said liability.

Having regard to the averments made in the counter-affidavit, which stood un-rebutted, I am unable to hold that the action of the respondents in bringing the properties in question to sale is either arbitrary or illegal. Since the petitioners do not dispute the fact that they were the lessees for the year 1992-1993 and in the absence of any material to contradict the claim of the respondents that the petitioners committed default and were liable to compensate the loss suffered by the department to the tune of Rs.80,26,314/-, the writ of Mandamus as prayed for cannot be granted. As a matter of fact, the petitioners could not place before this Court even the copy of the representation said to have been made by them on 17-09-2004. In the circumstances, I do not find any merit in the writ petition.

Accordingly, the writ petition is dismissed. No costs.

(G. ROHINI, J)

Date:14 -02-2006

ghn